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TO: MAIL STOP ISSUE FEE

COMPANY: USPTO

FAX NO.: 1-571-273-2885

FROM: Kevin D. McCarthy

RE: 09/809,291

DATE: November 14, 2006

NUMBER OF PAGES TRANSMITTED: COVER + 6 = 7

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Practitioner's Docket No. 0-05-201

PATENT

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: **Sommenschein**  
Application No.: **09/809,291**  
Filed: **March 15, 2001**  
For: **Fundoplication Apparatus and Method**  
Examiner: **Leubecker, John P.**  
Group No. **3739**  
Confirmation No. **5422**

11/14/2006 HDENESS2 00000082 09809291  
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Mail Stop ISSUE FEE  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**NOTIFICATION OF ERROR IN PAYMENT OF FEE(S) AS A SMALL ENTITY**  
**(37 C.F.R. § 1.28(c))**

NOTE: 37 C.F.R. § 1.28(c): "(c) How errors in small entity status are excused. If status as a small entity is established in good faith, and fees as a small entity are paid in good faith, in any application or patent, and it is later discovered that such status as a small entity was established in error, or that through error the Office was not notified of a loss of entitlement to small entity status as required by § 1.27(g)(2), the error will be excused upon: compliance with the separate submission and itemization requirements of paragraphs (c)(1) and (c)(2) of this section, and the deficiency payment requirement of paragraph (c)(2) of this section."

**CERTIFICATION UNDER 37 C.F.R. §§ 1.8(a) and 1.10\***

I hereby certify that, on the date shown below, this correspondence is being deposited with the United States Postal Service in an envelope addressed to the Mail Stop ISSUE FEE, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 with sufficient postage as first class mail or facsimile transmitted to the Patent and Trademark Office, 571-273-2885

Date: November 14, 2006

*Kevin D. McCarthy*  
Kevin D. McCarthy

\* Only the date of filing (§ 1.6) will be the date used in a patent term adjustment calculation, although the date on any certificate of mailing or transmission under § 1.8 continues to be taken into account in determining timeliness. See § 1.703(f).

**Erroneous Filing of Small Entity Statement**

1. On June 23, 2006 a small entity assertion was erroneously maintained in this application.
2. This assertion and maintaining of small entity status in this application and the payment of fee(s) as a small entity was made in good faith.
3. It has now been discovered that such status as a small entity was maintained in error.

## Itemization of the Fee(s) Erroneously Paid as Small Entity

4.	<u>FEE(S) ERRONEOUSLY PAID</u>	<u>FEE ACTUALLY</u>	<u>DEFICIENCY</u>
	<u>AS A SMALL ENTITY</u>	<u>PAID AS A</u> <u>SMALL ENTITY</u>	<u>OWED*</u>

☒ Fee for terminal disclaimer paid on

June 23, 2006

\$ 65

\$ 65

**WARNING:**

"The deficiency owed for each previous fee erroneously paid as a small entity is the difference between the current fee amount (for other than a small entity) on the date the deficiency is paid in full and the amount of the previous erroneous (small entity) fee payment. The total deficiency payment owed is the sum of the individual deficiency owed amounts for each fee amount previously erroneously paid as a small entity. Where a fee paid in error as a small entity was subject to a fee decrease between time the fee was paid in error and the time the deficiency is paid in full, the deficiency owed is equal to the amount (previously) paid in error. . . " 37 C.F.R. § 1.28(e)(2)(i).

**Total deficiency owed \$ 65**

5. The total deficiency owed is paid as follows:

☒ Authorization is hereby made to charge the amount of \$ 65 to Credit card as shown on the attached credit card information authorization form PTO-2038.

**WARNING:** Credit card information should not be included on this form as it may become public.

A duplicate of this paper is attached.

Respectfully submitted;

*Kevin D. McCarthy*  
Kevin D. McCarthy  
Reg. No.: 35,278

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